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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,333	10/22/2001	Lisa P. Weinberg	A01P1078	9773

7590 05/30/2003  
PACESETTER, INC.  
15900 Valley View Court  
Sylmar, CA 91392-9221

EXAMINER

GETZOW, SCOTT M

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 05/30/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/000,333

Applicant(s)

WEINBERG ET AL.

Examiner

Scott M. Getzow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 11, 16-33 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 9, 10 and 12-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3. 6) ☐ Other: \_\_\_\_

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5,8,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz '507.

Schwartz is considered to render obvious the above method claims. Specifically, Schwartz teaches a vagal stimulator which can stimulate the left and/or right vagus nerves, see column 4, lines 47-68. Further, as is taught in column 5, lines 35-39, electrodes are provided which can stimulate, and sense signals from, the atrium. The placement of the right vagus nerve electrode of Schwartz is considered to be placed at a location that is 'near' the patient's cardiac branch. That is, one of ordinary skill in the art would deem the placement of the electrode to be near to the cardiac branch of the heart.

3. Claims 16-19,22-29,31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilman '144.

Gilman is considered to render obvious all of the subject matter of the above claims. Gilman teaches a cardiac lead which includes a ventricular electrode 22 and an atrial electrodes 38. The sidearm 16 is deemed to allow for placement of the electrode 38 inside the patient's azygos vein. Thus, one of ordinary skill in

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the art would understand that the intended use of the lead as claimed by applicant could be accomplished by the structure of Gilman. Regarding claims 22,23, one of ordinary skill in the art would appreciate that the tines 40a-40d, as shown by Gilman, could accomplish secure placement of the lead inside the patient's heart. Regarding claims 24-26, to have a third electrode on the lead of Gilman would have been obvious and desirable since such would allow for better sensing of the patient's heart signal, and a more complete stimulation. (See other patents of record, including Mouchawar '198, where an electrode is in the SVC, atrium and ventricle).

4. Claims 20,21,30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilman '144 as applied to claims 16,27 above, and further in view of Webster '025.

Gilman teaches all of the subject matter of the above claims except for an expandable electrode. Webster teaches an expandable electrode for use in a cardiovascular catheter. It would have been obvious to use such an electrode with the lead of Gilman since such an electrode structure allows for a more complete sensing of the heart chamber's ECG signal.

***Allowable Subject Matter***

5. Claims 6,7,9,10,12,13,14,15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (703) 308-2997. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Scott M. Getzow  
Primary Examiner  
Art Unit 3762

smg  
May 26, 2003